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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYHARDY AND CAREY
ATTORNEYS AT LAW
111 VETERANS BOULEVARD
METAIRIE, LOUISIANA 70005ANTHONY R. HARDY
BRADFORD D. CAREY
MARJORIE R. ESMANTELEPHONE: 504-830-4040
TELEFAX 504-830-4050
OUR FILE NO.

April 26, 1993

2046-002

HAND DELIVEREDMs. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554Re: MM Docket No. 93-51
FM Proceeding, New Albany, Indiana

Dear Ms. Searcy:

Enclosed is an original and six (6) copies of First Motion of Midamerica to Enlarge Issues Against Martha J. Huber which we request that you accept for filing on behalf of our client, Midamerica Electronics Service, Inc., in the above-referenced proceeding.

Should the Commission have any questions, kindly direct them to the undersigned or Marjorie R. Esman of this office.

Sincerely,


Bradford D. CareyBDC/bgc
Enclosures
cc: Peter Boyce, w/encl.No. of Copies rec'd
List A B C D E

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DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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APR 26 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 93-51
MARTHA J. HUBER)	File No. BPH-911114ME
ADAMS RIB, INC.)	File No. BPH-911115MA
RITA REYNA BRENT)	File No. BPH-911115MC
D.E.K.W. COMMUNICATIONS, INC.)	File No. BPH-911115MF
MIDAMERICA ELECTRONICS SERVICE, INC.)	File No. BPH-911115ML
STATON COMMUNICATIONS, INC.)	File No. BPH-911115MU
For Construction Permit for a New FM Station on Channel 234A in New Albany, Indiana)	

To: Honorable Richard L. Sippel
Administrative Law Judge

**FIRST MOTION OF MIDAMERICA TO ENLARGE ISSUES
AGAINST MARTHA J. HUBER**

Midamerica Electronics Service, Inc., ("Midamerica"), by Counsel, hereby moves to enlarge the issues against Martha J. Huber to determine whether or not she is, and at the time of certification was, financially qualified to construct the station she has proposed; whether her affirmative certification of her financial qualifications was false; and, whether, in view of the evidence adduced, she has the requisite qualifications to be a Commission licensee. In support of this Motion, the following is shown:

Huber filed her application as a sole proprietor. (Official Notice of FCC Form 301 at page 3 requested. A copy is annexed hereto as Exhibit 1). She listed a bank loan in the amount of \$350,000 as the sole source of funding for her proposed station, against estimated costs of construction of \$281,078. (Official Notice of FCC Form 301 at page 6 requested. A copy is annexed hereto as Exhibit 2). She does not propose to provide any funding herself.

Huber's bank letter is a mere expression of interest and does not provide the requisite reasonable assurance. In response to the Standard Document Production Order, Huber produced a letter dated October 29, 1991 on the letterhead of Citizens Fidelity Bank. The letter, a copy of which is annexed hereto as Exhibit 3, states in part that:

It is our understanding that you are filing an application with the Federal Communications Commission (FCC) for a construction permit for a new FM broadcast station in New Albany, In. This letter is to inform you that in the event you are awarded the authorization to construct the station and subject to the provisions outlined below, this bank *would be interested* in loaning *up to \$350,000* for the purpose of constructing and operating the station.

The loan would be for a period as long as two to five years with the interest at a percent increment above the bank's prime rate, subject to change from time to time. Principal payment would be deferred for the first year with equal monthly or quarterly payments thereafter. The collateral would be all of the tangible assets of the station.

We understand that at this stage of the process the FCC does not require a contractually binding commitment, and this letter is not such a loan commitment. (emphasis added).

The letter, by its terms, is nothing more than the expression of the bank's interest that Ms. Huber seek a loan at some later date. It does not meet the

Commissions standards. The letter reflects that, at its writing, it was not a *committed source of funding*, as required.

The Commission's test for bank letters has been often recited by its Administrative Law Judges, the Review Board and the Commission, itself. As stated by the Review Board in *Maria M. Ochoa*, ____ FCC RCD ____, 92 R-81 (Released October 13, 1992) ("*Ochoa*"),

...to determine that an applicant has "reasonable assurance" of "committed sources of funds" from a lending institution, we will review the following factors: Whether (1) the bank has a long and established relationship with the borrower sufficient to infer that the lender is thoroughly familiar with the borrower's assets, credit history, current business plan, and similar data, *see Multi-state Communications, Inc. v. FCC*, 590 F2d 1117 (D.C. Cir 1978); or, (2) the prospective borrower has provided the bank with such data, and the bank is sufficiently satisfied with this financial information (e.g. collateral guarantees, *see Chapman Radio and Television Co.*, 70 FCC 2d 2063, 2072 (1979) that *ceteris paribus*, a loan in the stated amount would be forthcoming, and that the borrower is fully familiar with, and accepts the terms and conditions of the proposed loan (e.g. payment period, interest rate, collateral requirements and other basic terms). Short of these ordinary fundamentals, it would be difficult to infer "reasonable assurance" from, a committed source." in other words, central to any successful "reasonable assurance" showing of a loan from a financial institution is that the "individual qualifications of the borrower have been preliminarily reviewed. *Christina Communications* 2 FCC Rcd 1971, 1974 (1987), that adequate collateral has been demonstrated, *Chapman Radio*, *supra* and that the tentative terms of the loan are specifically identified and are satisfactory to both borrower and lender.

As noted, *ante*, the letter is merely an expression of the bank's interest in possibly making a loan at some time in the future. It does not confirm that the bank had already determined, at the time the letter was written, that it would make a loan in the future unless circumstances materially changed.

Moreover, essential terms have not been stated and agreed to. For example, the letter recites that "[t]he loan would be for a period as long as two to five years with the interest at a percent increment above the bank's prime rate, subject to change from time to time." A loan that would be for "a period as long as two to five years" might also be for a period as short as a month, if made at all. Furthermore, there is not even a suggestion as to how many percent above the bank's prime rate that the writer contemplated by the phrase "at a percent increment), if indeed he did contemplate it.

The letter states that the collateral for the loan would be all the tangible assets of the station. As noted, *ante*, Huber's sole financial source is the bank letter, with a face amount of up to \$350,000. She reported estimated costs of construction and operation, without revenue, for the first three months of \$281,078.

Presumably, no bank today would, were it to make Huber a loan, lend more than the cost of the assets that are to be secured by the loan. Thus, even if this bank were in the habit of loaning *all* of the funds needed for a start-up business, without the principal(s) putting any money into the venture as capital, Huber would be underfunded by the full costs of construction labor and operating capital.¹ it is clear

¹No requirement of personal guarantees, stock pledge, or other asset collateral is stated. So the bank would have to justify this loan to its examiners based on the tangible assets alone. The typical corporate or partnership borrower that is a Commission permittee or licensee is required to provide pledges of the corporate stock or the partnership interests so that if the loan does go into default, the bank, after obtaining the Commission's consent on a "short-form" 316, Application for Consent to Transfer of Control, may control the licensee entity (or have a receiver appointed to run it) and receive full value for the station as an operating concern. This bank letter does not provide for any such mechanism. Virtually any lender which had seriously considered committing to lend Huber funds for her

that for her proposed total costs of construction and operation, the bank could not be satisfied with only the stated collateral of a pledge of the tangible assets. (*Chapman, supra*).

There is no indication that the bank has even made a preliminary review of Huber's qualifications, as is required. (*Christina Communications, supra*). Nor is there a *Multi-state* recitation that the bank is familiar with the proposed borrower

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Fidelity letter tracks the then recently received by Huber sample. The critical difference is that the sample letter uses the phrase *...this bank is prepared to loan...* while the Citizen's Fidelity letter on which Huber is relying totally is phrased *...would be interested in loaning up to...*

The difference is that of a commitment now of a ready loan and an invitation to seek a loan in the future. Since Huber had the sample before she certified her application, even if it were otherwise not already warranted, a false certification issue, in addition to the qualifications issue is warranted.

In view of the foregoing, Midamerica Electronics Service, Inc. respectfully urges that the issues in this proceeding be enlarged by designation of the following issues:

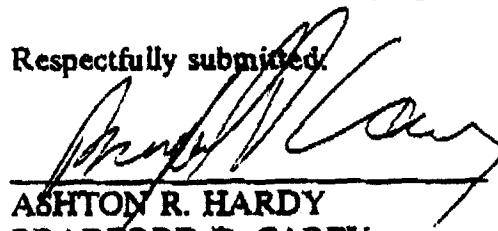
To determine whether Martha J. Huber ("Huber") has reasonable assurance of the availability of a loan in the amount of \$350,000 from Citizen's Fidelity Bank for the construction and operation for three months without revenue of her proposed station; and, whether the letter from Citizen's Fidelity dated October 29, 1991 gave her such reasonable assurance;

To determine whether Huber is financially qualified;

To determine the facts and circumstances surrounding Huber's

To determine, in light of the evidence adduced, whether Martha J. Huber has the requisite qualifications to be a Commission licensee.

Respectfully submitted,



ASHTON R. HARDY
BRADFORD D. CAREY
MARJORIE R. ESMAN
HARDY AND CAREY
111 Veterans Boulevard, Suite 255
Metairie, LA 70005
Telephone: (504) 830-4646
Counsel for Midamerica Electronics
Service, Inc.

Dated: April 26, 1993

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EXHIBIT 1

Section II - LEGAL QUALIFICATIONS (Page 2)

6 List the applicant, parties to the application and non-party equity owners in the applicant. Use one column for each individual or entity. Attach additional pages if necessary.

(Read carefully - The numbered items below refer to line numbers in the following table.)

1 Name and residence of the applicant and, if applicable, its officers, directors, stockholders, or partners (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and partners.

2 Citizenship.

3 Office or directorship held.

4 Number of shares or nature of partnership interests.

5 Number of votes.

6 Percentage of votes.

7 Other existing attributable interests in any broadcast station, including the nature and size of such interests.

8 All other ownership interests of 5% or more (whether or not attributable), as well as any corporate officership or directorship, in broadcast cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in 47 C.F.R. Section 73.3555 and 76.501, including the nature and size of such interests and the positions held.

1	Martha J. Huber 1927 Plum Hill Way Floyds Knob, IN 47119		
2	U.S.		
3	Individual Applicant		
4	Individual Applicant		
5	Individual Applicant		
6	Individual Applicant		
7	None		
8	None		

EXHIBIT 2

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue. ☒ Yes ☐ No
2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue. \$ 281,078
3. Identify each source of funds including the name, address and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
Citizens Fidelity Bank and Trust Company Indiana P.O. Box 1248 New Albany, IN 47151-1248 Contact Person: Leo Tierney	(812) 945-2255	Bank Loan	\$350,000

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EXHIBIT 3

APR-26-93 MON 15:11 HARDY & CAREY
New Albany, Indiana 47012-48

P. 20



October 29, 1991

Martha J. Huber
1927 Plum Hill Way
Floyds Knobs, Indiana 47119

Dear Ms. Huber:

It is our understanding you are filing an application with the Federal

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EXHIBIT 4

DRAFT BANK LETTER

Martha J. Huber
1927 Plum Hill Way
Flyds Knobs, Indiana 47119

Dear Ms. Huber:

It is our understanding you are filing an application with the Federal Communications Commission (FCC) for a construction permit for a new FM broadcast station in New Albany, IN. This letter is to inform you that in the event you are awarded the authorization to construct the station and subject to the provisions outlined below, this bank is prepared to loan up to \$350,000 for the purpose of constructing and operating the station.

The loan would be for a period of five years with the interest at _____ percent above the bank's prime rate at the time. No principal payments would be required for the first year with equal quarterly payments thereafter. The collateral for the loan would be all the tangible assets of the station.

We understand that at this stage of the process the FCC does not require a contractually binding commitment, and this letter is not such a loan commitment. We do intend by this letter to assure you and the FCC of our interest in assisting you to construct and operate the station in question, provided of course, that the funding of the amount indicated, or any part thereof, will be subject to formal approval by the bank after the bank's review of your financial condition at the time and the execution of a loan agreement incorporating those terms and conditions that we may deem appropriate and similar to which we customarily require in an agreement of this type.

Very truly yours,

Bank Officer

October 24, 1991
Page Two

We thus suggest that you obtain a bank letter in the amount of \$350,000, which should provide a comfortable margin for any contingencies. Enclosed is an example of the type of bank letter needed.

IV. Community Needs and Programming

Please identify five or six principal community needs or issues facing New Albany and consider the type of radio programming which would address such needs and interests. The new station will be the only FM station serving New Albany, and thus will be an important means for disseminating information.

V. Equal Employment Opportunity Program

Please compile a list of:

- a) Minority and women organizations in the area.
- b) Employment referral services.
- c) Colleges in the area.
- d) Local newspapers.

With this data the EEO portion of the application can be completed.

Since the filing deadline is November 15, 1991, we should plan to have all the information, site, and bank letters completed by November 11th so that we can meet

CERTIFICATE OF SERVICE

I, Brenda Cherry, a secretary in the law firm of Hardy and Carey, do hereby certify that a copy of the above and foregoing document has been served on counsel for all parties to this proceeding, by mailing a copy of same via U.S. Mail, postage prepaid, this 26th day of April, 1993, addressed to the following:

Honorable Richard L. Sippel *
Judge
Federal Communications Commission
2000 L Street, N.W., Room 214
Washington, D.C. 20554

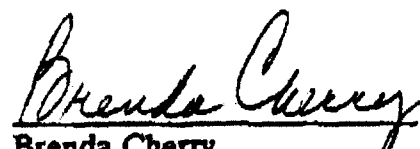
James Shook, Esq.
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Hearing Branch
2025 M Street, N.W., Room 7212
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P. O. Box 1226
Jeffersonville, IN 47131

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Counsel for Rita Reyna Brent

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1627 Eye Street, N.W.
Suite 810
Washington, D.C. 20006
Counsel for Staton Communications, Inc.


Brenda Cherry

* By Hand